At common law a judge was disqualified if he was a party to the cause or interested in it financially, but his judgment was merely voidable. Generally the disqualification might be waived by the parties. *Dimes* v. *Grand Junction Canal*, 3 H. L. 759. Where statutes expressly forbid persons performing judicial functions from acting when they are interested, such interest, if subsequently shown, is usually held to render the judgment void. *Moses* v. *Julian*, 45 N. H. 52; *Oakley* v. *Aspinwall*, 3 N. Y. 547. But see *Hine* v. *Hussey*, 45 Ala. 496. See FREEMAN, JUDGMENTS, 4 ed., § 146 *et seq.* See also 20 HARV. L. REV. 152; 30 *Id.* 103. A disqualified judge may make a purely formal order. See *Estate of White*, 37 Cal. 190, 192. Judgments of a *de facto* judge, unlike those of a disqualified judge, stand against collateral attack. *State* v. *Alling*, 12 Ohio St. 16. Where the vote of the disqualified judge does not decide the result, there is no settled authority as to the effect of his participation. The situation is analogous to the case of the director with whom the board, of which he is a member, contracts on behalf of the corporation. If the interested director takes no part in the proceedings, the weight of American authority is that the contract is not void. *Fort Payne Rolling Mill* v. *Hill*, 174 Mass. 224, 54 N. E. 532. But see *Stewart* v. *Lehigh Valley Co.*, 38 N. J. L. 505. Both as to judges and directors, the earlier cases were disinclined to consider degrees of influence. See *Hesketh* v. *Braddock*, 3 Burr. 1847, 1856. When the disqualified judge is not necessary to the decision, there is no reason for pushing the rule against participation to extremes, and the present decision may be supported notwithstanding the seeming impropriety of the judge's conduct. But see *Seaward* v. *Tasker*, 143 N. Y. Supp. 257. *Cf. Matter of Ryers*, 72 N. Y. 1; *State* v. *Polley*, 34 S. D. 565, 138 N. W. 300.

PROXIMATE CAUSE — EFFICIENT CAUSE OF INJURY — CAUSAL CONNECTION NOT BROKEN BY FAILURE TO ACT. — A brakeman on a freight train negligently failed to signal another train which, because of the railroad company's negligence, was following dangerously close. A rear-end collision occurred, in which the brakeman was killed. His administrator sued under the Federal Employers' Liability Act. *Held*, that he could recover. *Union Pacific Railroad Co.* v. *Hadley*, 38 Sup. Ct. 318.

For a discussion of this case, see Notes, page 1158.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — POWER OF STATE TO ALTER RATES FIXED BY MUNICIPAL FRANCHISE. — An ordinance granting a sewer company permission to operate within municipal limits imposed a condition that rates for service to property owners should not exceed a maximum fixed therein. The state subsequently created a public utilities commission with power to fix rates. The sewerage company petitioned the commission for authority to charge rates higher than the maximum fixed in the ordinance. *Held*, that the commission had jurisdiction to grant the authority sought. *Collingswood Sewerage Co.* v. *Borough of Collingswood*, 102 Atl. 901 (N. J.).

The rather common provision that a public service company must secure the consent of the municipality in which it proposes to operate, and that, in granting such permission, the municipality may or shall impose conditions, results in a peculiar agreement between the public service company and the municipality or its residents and property owners. Until and unless the state acts this agreement is binding on both parties. See 31 HARV. L. REV. 879. But it is clear that the state may, without encountering the contract clause of the federal constitution, legislate such agreements out of existence, or modify them in any way. The state may authorize the public service company to charge rates in excess of the maximum provided by the agreement. *City of Worcester* v. *Worcester, etc. Ry. Co.*, 196 U. S. 539; *Board of Survey of Arlington* v.

Bay State St. Ry. Co., 224 Mass. 463, 113 N. E. 273. And the state may reduce rates below those fixed in the agreement. *Rogers Park Water Co.* v. *Fergus*, 180 U. S. 624. The reason lies in the strong policy in favor of governmental regulation of services vital to the public good. *Munn* v. *Illinois*, 94 U. S. 113. The agreement between the municipality and public service company is usually called a contract. But the features just noted show that we have here a kind of agreement that does not come within the usual conception of a contract. Either there is some lack of capacity of parties to contract with reference to the subject matter, or there is something peculiar in the agreement itself. Whatever the defect may be, it is submitted that the court was correct in the principal case in saying, "The truth in an ordinance of this kind is a grant upon condition, rather than a contract." The grant is of all right which the municipality can give, and the condition is that it shall be subject to state regulation or alteration. This description better suits the nature of the agreement, and it avoids the confusion that arises from the idea of a contract not protected against state legislation by the contract clause of the federal constitution.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — RULE OF BOARD OF TRADE FIXING GRAIN PRICES. — The Chicago Board of Trade adopted a rule prohibiting its members from dealing in grain "to arrive," during the interval between the close of the daily "call" session and the opening of the next day's "call," at any other price than the closing bid at the "call." *Held*, not a violation of the Sherman Anti-Trust Law. *Board of Trade of Chicago* v. *United States*, 38 Sup. Ct. 242.

For a discussion of this case, see Notes, page 1154.

SEAMEN — SEAMEN'S ACT OF 1915 — REQUIREMENT OF GOOD FAITH. — The Seamen's Act (38 STAT. AT. L. 1165), provides that "every seaman of a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs a one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. . . . This section shall apply to seaman of foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seaman for its enforcement." Libellants demanded half their wages pursuant to this section. This demand was part of a concerted purpose to leave the ship because of the submarine danger. The demand was refused. The libellants left the ship. *Held*, they cannot recover for wages. *The Belgier*, 246 Fed. 966.

A quitting of the ship *non animo revertendi* has always been a reprehensible offense at the maritime law. It was justified by cruelty, deviation, or a failure to supply provisions, and by practically no other grounds. *Sherwood* v. *McIntosh*, Ware (U. S. Dist. Ct.), 109; *The Eliza*, 1 Hagg. Adm. 182; *The Castilia*, 1 Hagg. Adm. 59; *Brower* v. *The Maiden*, Gilp. (U. S. Dist. Ct.) 294. See 3 KENT, COMMENTARIES, 11 ed., 270–72. See also 11 HARV. L. REV. 411. A desertion forfeited the wages due the seaman. *The Bark Merrimac*, 1 Ben. (U. S. Dist. Ct.) 490; *Coffin* v. *Jenkins*, 3 Story (U. S. Cir. Ct.) 108. The Seaman's Act abolished arrest and imprisonment as a penalty for desertion. The avowed purpose of the act was to encourage the desertion of seamen from foreign vessels in the harbors of the United States and thereby to remove the economic handicap which higher wages have placed on American shipping. The act was a piece of "international bad manners," and the result reached by the court is no doubt salutary, but *quaere* whether it was justified in overriding the legislative intent by reading "good faith" into the statute.